Office Supreme Court
FILED
NOV 5 1900
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900

No.

Austro-Americana Steamship Company
Libellant

against

Certain Consignments of Brimstone
(Four cross-libels to original suits against the steamship Styria)

} Nos. 474, 475, and 477.

PETITION FOR WRIT OF CERTIORARI

WING, PUTNAM & BURLINGHAM
BOWERS & SANDS
SULLIVAN & CROMWELL
STERN & RUBEMORE
Proctors for Claimants-Petitioners

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1900, No.

1

AUSTRO-AMERICANA STEAMSHIP COMPANY, owner of Steamships "STYRIA" and "ABBAZIA,"

Libellant,

AGAINST

3250 cantars of brimstone,
JAMES L. MORGAN *et al.*,
Claimants-Petitioners.

2

The Same

AGAINST

4550 cantars of brimstone,
SCHUYLER L. PARSONS,
Claimant-Petitioner.

Notice of Motion.

The Same

3

AGAINST

1500 tons of brimstone,
ALFRED S. MALCOMSON,
Claimant-Petitioner.

The Same

AGAINST

100 tons of brimstone,
JOHN MUNROE *et al.*,
Claimants-Petitioners.

4

SIRS:

Take notice, that the annexed petition for a writ of *certiorari* to the United States Circuit Court of Appeals

for the Second Circuit will be presented to the Supreme Court of the United States on Monday, November 5th, 1900.

New York, October 31, 1900.

Yours, etc.,

WING, PUTNAM & BURLINGHAM,
Proctors for Morgan.

BOWERS & SANDS,
Proctors for Parsons.

SULLIVAN & CROMWELL,
Proctors for Malcomson.

STERN & RUSHMORE,
Proctors for Munroe.

To Messrs. CONVERS & KIRLIN,
Proctors for Libellant.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1900, No.

AUSTRO-AMERICANA STEAMSHIP COMPANY, owner of Steamships "STYRIA" and "ABBAZIA,"
Libellant,

AGAINST

3250 cantars of brimstone,
JAMES L. MORGAN *et al.*,
Claimants-Petitioners.

The Same

AGAINST

4550 cantars of brimstone,
SCHUYLER L. PARSONS,
Claimant-Petitioner.

The Same

AGAINST

1500 tons of brimstone,
ALFRED S. MALCOMSON,
Claimant-Petitioner.

The Same

AGAINST

100 tons of brimstone,
JOHN MUNROE *et al.*,
Claimants-Petitioners.

13 PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of James L. Morgan *et al.*, Schuyler L. Parsons, Alfred S. Malcomson, and John Munroe *et al.*, claimants of the consignments of brimstone above mentioned, respectfully alleges as follows:

14 I.—The above-entitled suits were begun by cross-libels filed in the District Court for the Southern District of New York against certain consignments of brimstone, of which the petitioners were the owners and claimants.

The four original suits were brought by the respective petitioners against the steamship *Styria* to recover damages by reason of the failure of the steamship to bring forward to New York the above-mentioned consign-
15 ments of brimstone, which had been loaded on the *Styria* at Porto Empedocle, Sicily, in April, 1898.

The master of the *Styria* unloaded the brimstone at the port of shipment for alleged "facts of war" and sailed to New York with other merchandise. Subsequently, in September, 1898, the brimstone thus stored was carried forward to New York by the steamship *Abbazia* belonging to the same owner as the *Styria*, and there delivered to the petitioners under a stipulation.

16 II.—Thereupon, the libellant herein, the Austro-Americana Steamship Company, as owner of the steamships *Styria* and *Abbazia* filed cross-libels as aforesaid to recover charges incurred in unloading the brimstone from the *Styria*, storing it in Sicily, and reloading it upon the *Abbazia*.

III.—The District Court held that the master of the *Styria* was not justified in leaving the brimstone in Sicily, and gave decrees in favor of these petitioners in their original suits against the *Styria* for their dam-

ages, and dismissed the cross-libels in the four above 17
entitled suits.

From this decision the merchants (the petitioners) appealed on the question of damages and the ship owner appealed on the merits.

The Circuit Court of Appeals reversed the decrees of the District Court, giving the merchants their full damages and allowing the ship owner the proper expenses of discharging and re-shipping at Porto Empedocle.

18

IV.—On May 28th, 1900, the claimant of the *Styria* applied to this Court for a writ of *certiorari* in the four suits brought by the petitioners herein against the steamship *Styria*, and on October 15th, 1900, this Court granted the application and directed the issuance of a writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit.

V.—The suits against the *Styria* for damages, in which the writ of *certiorari* has already been granted, 19
and the cross-suits by the owner of the *Styria* against the original libellants arise out of the same transaction. The eight suits were tried together in the District Court, and the appeals taken therein were heard on the same record in the Circuit Court of Appeals.

The transcript of record on which the application was made to this Court by the claimant of the *Styria* contains the pleadings, proofs, and complete record of proceedings in the cross-suits, as well as in the original suits.

20

VI.—Your petitioners beg leave to refer to the certified copy of the transcript of record returned from the District Court to the Circuit Court of Appeals for the Second Circuit, and the record in the last named Court, which were duly filed with the Clerk of this Court on or about May 28th, 1900.

See Nos 300, 301, 302, 303 Oct. Term 1900.

VII.—In Hubbard *v.* Tod (171 U. S., 474) this Court has decided that where a case was brought up on *certiorari* from a Circuit Court of Appeals on petition of

21 one of the parties, it will pass only upon the errors assigned by the petitioner and will not consider errors assigned by the other party.

On the hearing of these appeals the petitioners desire to be heard in support of the assignments of error made by them below and for this reason make the present application.

Wherefore, your petitioners pray that this Honorable Court will cause a writ of *certiorari* to be issued, pur-
22 suant to the power vested in this Court by the judiciary act approved March 3, 1891, requiring said Circuit Court of Appeals for the Second Circuit to certify the whole record and acts to this Court for consideration, and that thereupon this Court will decide the whole matter in controversy between the parties.

And your petitioners will ever pray, etc.

JAMES L. MORGAN,
SCHUYLER L. PARSONS,
ALFRED S. MALCOMSON,
23 JOHN MUNROE & COMPANY,
By EDGAR LOCKWOOD.

Sworn to before me this 31st day of October, 1900.

TEN EYCK R. BEARDSLEY,
Notary Public,
N. Y. Co.

I hereby certify that I have examined the foregoing
24 petition and in my opinion it is well founded and is entitled to the favorable consideration of the Court.

HARRINGTON PUTNAM,
Advocate.